

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-23094-CIV-HUCK/O'SULLIVAN

ALFONSO A. AROSEMENA,

Plaintiff,

v.

SEFARDIK ASSOCIATES, LLC, d/b/a
THE NURSING CENTER AT MERCY,

Defendant.

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of all parties to effectuate a compromise and settlement of all claims. After review and consideration, the Court believes that entry of this judgment is in the interest of justice.

1. Plaintiff, Alfonso A. Arosemena ("Arosemena"), commenced this action in the United States District Court for the Southern District of Florida, alleging that Defendant, Sefardik Associates, LLC d/b/a The Nursing Center at Mercy ("Sefardik"), violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§4301 - 4333 ("USERRA") by eliminating Arosemena's position as Director of Housekeeping and Laundry (originally held with Egremont, not a party to this matter), while Arosemena was away on military service in the United States Army Reserve ("Reserve"), and refusing to grant him reemployment because of his military service, which was a motivating factor in its decisions.

2. As a result of settlement discussions, Arosemena and Sefardik have resolved their

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differences and have agreed that this action should be settled by entry of this Consent Decree. It is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of any and all claims alleged against Sefardik that could have been alleged in the Complaint filed on behalf of Arosemena. Arosemena, by his signature to this document and the attached release, has indicated his acceptance of the terms and conditions contained in this Consent Decree.

STIPULATED FACTS

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Southern District of Florida over the subject matter of this action and of the parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.

4. Venue is proper in this district for purposes of this Decree and any proceedings related to this Decree only. Sefardik agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the Consent Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the parties to this action.
- b. The terms and provisions of this Consent Decree are fair, reasonable, and just. The rights of Arosemena and Sefardik are protected adequately by this Decree.
- c. This Consent Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any

person. The entry of this Consent Decree will further the objectives of USERRA and other applicable law, and will be in the best interests of the parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

NON-ADMISSION

6. This Decree, being entered with the consent of the United States Attorney's Office, Arosemena, and Sefardik, shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by Sefardik of any violations of USERRA, or any other law, rule or regulation dealing with or in connection with equal employment opportunities. Sefardik denies any wrongdoing.

ACKNOWLEDGEMENT OF LAW

7. Sefardik acknowledges that pursuant to USERRA an employer shall not fail or refuse to hire any individual, discharge any employee, or take any other adverse action against any employee, based on the military service obligation or past or present military service status of such individual or employee, in violation of USERRA.

8. Sefardik acknowledges that pursuant to USERRA an employer shall not take any action against any person that constitutes retaliation or interference with the exercise of such person's rights under USERRA because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL REQUIREMENTS

9. Sefardik shall pay Arosemena the amount of \$8,912.82 to be paid pursuant to the following schedule:

- a. An initial payment of \$2,228.21, within twenty-one (21) days of the Court's entry of this Decree, and Sefardik's receipt of a signed general release;
- b. Payment of \$2,228.21, within fifty-one (51) days of the Court's entry of this Decree;
- c. Payment of \$2,228.20 within eighty-one (81) days of the Court's entry of this Decree; and
- d. Final payment of \$2,228.20 within one hundred and eleven days of the Court's entry of this Decree.

If Sefardik fails to effectuate payment to Arosemena within three (3) days of its due date, the entire remaining amount owed shall become immediately due and payable. Additionally, Sefardik shall be responsible to Arosemena for any costs, including reasonable attorneys fees, associated with collecting any amount due. Each payment shall be made payable to "Alfonso A. Arosemena" by either Sefardik's business check, or by a cashier's check or money order. The total payment of \$8,912.82 represents full settlement of all claims brought by Arosemena in this action. Sefardik shall issue Arosemena a IRS Form 1099, and he shall be responsible for payment of any applicable taxes associated with this amount.

10. Sefardik shall send all payments as directed above in paragraph 9 by Federal Express (or other standard overnight delivery) to Arosemena at the following address:

Alfonso Arosemena
13121 S.W. 268 Street
Miami, Florida 33032

On the same day that Sefardik mails each payment to Arosemena, Sefardik shall provide written confirmation of that fact to counsel for Arosemena at the following address:

Veronica Harrell-James
United States Attorney's Office
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132
Fax No.: (305) 530-7139

DISPUTE RESOLUTION AND COMPLIANCE

11. The Court shall retain jurisdiction and will have all available equitable powers, including injunctive relief, to enforce this Decree. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking review by the Court. The parties shall be required to give notice to each other ten (10) days before moving for review by the Court. All parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Decree or defending against a claim of non-compliance.

MISCELLANEOUS

12. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

13. This Consent Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by Arosemena in this action. The Court retains jurisdiction over this matter, however, for the purpose of entering appropriate orders interpreting and enforcing this judgment.

14. If any provision of this Consent Decree is found to be unlawful, only the specific provision in question shall be affected and the other provisions will remain in full force and effect.

15. The terms of this Consent Decree are and shall be binding upon the heirs, successors, and assigns of Sefardik and upon the heirs, successors, and assigns of Arosemena.

16. This Consent Decree constitutes the entire agreement and commitments of the parties. Any modifications to this Decree must be mutually agreed upon and memorialized in a writing signed by Sefardik and Arosemena.

EFFECTIVE DATE

17. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

18. This Consent Decree shall expire, and this action shall be dismissed, without further order of this Court thirty days from the date that documentation of the last payment due to Arosemena has been submitted to counsel for Arosemena, or after any dispute arising under this Consent Decree has been finally resolved by the Court, whichever is later. Arosemena, by and through his attorneys, may move, for good cause, to extend the Consent Decree if the remedial relief called for herein has not been effectuated. The Consent Decree will not be extended, however, unless the Court grants Arosemena's motion. Any such extension may be granted by the Court only for such time as is necessary to effectuate the relief set forth in this Consent Decree.

APPROVED and ORDERED this 5th day of June, 2009.

Miami, Florida

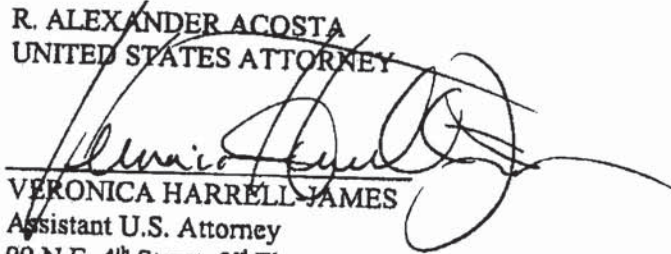

UNITED STATES DISTRICT JUDGE

ON BEHALF OF PLAINTIFF ALFONSO A. AROSEMENA

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By:



VERONICA HARRELL-JAMES
Assistant U.S. Attorney
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Veronica.Harrell-James@usdoj.gov



Alfonso A. Arosemena

ON BEHALF OF DEFENDANT SEFARDIK ASSOCIATES

MANCUSO & DIAS, P.A.

By:



Amy C. Russell, Esq.
11380 Prosperity Farms Road
Suite 209
Palm Beach Gardens, Florida 33410
Florida Bar No.: 0509256
Tel.: (561) 776-8551
Fax: (561) 776-8483
Arussell@mdlegal.net

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS that I, ALFONSO A. AROSEMENA, Releasor, for and in consideration of the sum of EIGHT THOUSAND NINE HUNDRED TWELVE DOLLARS AND 82/100 CENTS (\$8,912.82), and pursuant to the provisions of the Consent Decree, or other valuable considerations, received from or on behalf of SEFARDIK ASSOCIATES, LLC, d/b/a THE NURSING CENTER AT MERCY, and their parents, subsidiaries, affiliates, members, managers, operators, assignees, officers, directors, shareholders, and employees, Releasee, the receipt whereof is hereby acknowledged, (Wherever used herein in the terms "Releasor" and "Releasee" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and employees and agents, and the successor and assigns of corporations, wherever the context so admits or requires), hereby remise, release, acquit, satisfy and forever discharge the said Releasee, of and from any and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which said Releasor ever had, now has, or which any personal representative, successor, heir or assign of said Releasor, hereafter can, shall or may have against said Releasee, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents, and more particularly with reference to any and all claims arising, specifically relative to the subject matter of: ALFONSO A. AROSEMENA v. SEFARDIK ASSOCIATES, LLC, d/b/a THE NURSING CENTER AT MERCY, filed in the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA, CASE NO.: 08-23094, including any and all claims for attorneys fees and costs.

THIS RELEASE IS NOT INTENDED TO RELEASE, OR INURE TO THE BENEFIT OF, ANY OTHER PARTIES NOT SPECIFICALLY NAMED HEREIN.

The Releasor hereby agrees to indemnify and hold harmless the Releasee from any and all claims and/or liens and/or subrogated interests herein for which these funds are intended to cover.

Releasor warrants and expressly agrees to satisfy any and all existing encumbrances or liens, including but not limited to governmental or third party payor sources such as Medicare, Medicaid or Social Security liens which are in existence, and agree to satisfy any encumbrances or liens which may hereinafter be filed, levied, asserted, or placed upon any proceeds from this agreement.

Releasor has had the benefit of counsel and of his own attorney; that Releasor fully understands the terms of this General Release; and that Releasor is making full

and final settlement of all claims of every nature and character against persons hereby released.

It is further understood and agreed that this settlement is the compromise of disputed claims and that the payment made is not to be construed as an admission of liability on the part of any Releasees, all of whom expressly deny any liability for this action.

It is further understood and agreed that no promise or agreement not herein expressed has been made to Releasor and that this General Release contains the entire agreement between the parties to it and that the terms of this Release are contractual and not a mere recital.

Further, the Releasor waives and agrees to hold harmless, Releasee from any and all claims that may exist on behalf of all natural and/or adopted children of ALFONSO A. AROSEMENA.

3RD IN WITNESS WHEREOF, we hereunto set my/our hands and seals on this day of JUNE, 2009.

GARY POINTER
Witness (signature)

ALFONSO A. AROSEMENA
ALFONSO A. AROSEMENA

GARY POINTER
Witness (print or type name)

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 3RD day of JUNE 2009 by ALFONSO A. AROSEMENA who is personally known to me or has produced FLORIDA DRIVER LICENSE as identification and who did not (did) take an oath.

R. A. LEON
Notary Public, State of
(Signature of Notary taking
Acknowledgment)

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R. A. LEON
Name of Notary Typed,
Printed or Stamped



My Commission Expires: 9/3/2010

DD0587870
Commission Number

THIS INSTRUMENT PREPARED BY:

Daniel E. Dias, Esquire
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